

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RAYMOND CATANIA,

Plaintiff,

v.

19-CV-677 (JLS) (HKS)

THERESA WEREMBLEWSKI,
FIRST STUDENT, and
COMPANY HEALTH,

Defendants.



DECISION AND ORDER

Plaintiff Raymond Catania commenced this action on May 24, 2019 alleging employment discrimination claims against Theresa Weremblewski under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Americans with Disabilities Act of 1990 ("ADA"). Dkt. 1. The case has been referred to United States Magistrate Judge H. Kenneth Schroeder, Jr. for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 13.

On August 5, 2020, Weremblewski moved to dismiss the Complaint. Dkt. 12. Plaintiff submitted a letter and a pay stub in response to Weremblewski's motion. Dkt. 16, 17. Weremblewski did not reply. On January 12, 2022, Judge Schroeder issued a Report, Recommendation and Order ("R&R"), recommending that Weremblewski's motion "be granted without prejudice to allow plaintiff the opportunity to assert an alternative cause of action against the defendant or to .

move to add a covered entity as a defendant to an ADA claim.” Dkt. 18 at 5. On April 11, 2022, this Court issued a Decision and Order accepting and adopting the R&R. Dkt. 21. The Court also granted Plaintiff leave to amend the Complaint. *Id.*

On May 12, 2022, Plaintiff filed an Amended Complaint that again names Weremblewski as a defendant. *See* Dkt. 22 at 1. The Amended Complaint also identifies Company Health as an alleged discriminating entity and First Student as Plaintiff’s employer. *See id.* at 1-2.

First Student moved to dismiss on April 7, 2023. Dkt. 38. Company Health then moved to dismiss on April 28, 2023. Dkt. 43. On May 23, 2023, Plaintiff filed an additional submission, Dkt. 45, and on June 9, 2023, Company Health filed a declaration in further support of its motion. Dkt. 46. Plaintiff filed another submission on July 20, 2023. Dkt. 47.

On March 4, 2024, Judge Schroeder issued a Report, Recommendation, and Order recommending that this Court grant the motions by First Student (Dkt. 38) and Company Health (Dkt. 43). *See* Dkt. 48. As to First Student only, he recommends that dismissal be “without prejudice to the filing of a second amended complaint.” *Id.* at 18. As to Weremblewski, the R&R provides that “nothing in the record corrects the deficiency identified” in the prior R&R (Dkt. 18). *Id.* at 9. And “to the extent that plaintiff seeks to assert a defamation claim” against Weremblewski “for statements in August of 2016 to either plaintiff’s employer or the New York Department of Motor Vehicles, any such claim was time barred prior

to the filing of the original complaint on May 24, 2019.” *Id.* Neither party filed objections, and the time to do so has expired.

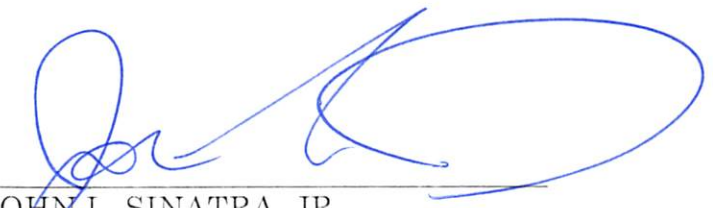
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the [48] R&R and the relevant record. Based on that review, the Court accepts Judge Schroeder’s recommendation. Thus, for the reasons stated above and in the [48] R&R, the motions to dismiss by First Student (Dkt. 38) and Company Health (Dkt. 43) are GRANTED. Further, all claims against Weremblewski are DISMISSED.

Plaintiff is granted leave to amend his claims against First Student only. The case is referred back to Judge Schroeder consistent with the August 10, 2020 referral order. See Dkt. 13.

SO ORDERED.

Dated: April 1, 2024
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE